

**United States Department of Labor  
Employees' Compensation Appeals Board**

M.B., Appellant	)	
	)	
and	)	<b>Docket No. 18-1290</b>
	)	<b>Issued: August 13, 2019</b>
<b>DEPARTMENT OF THE ARMY, EDGEWOOD</b>	)	
<b>CHEMICAL BIOLOGICAL CENTER,</b>	)	
<b>Edgewood, MD, Employer</b>	)	
	)	

*Appearances:*  
Analese B. Dunn, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

On June 15, 2018 appellant, through counsel, filed a timely appeal from a December 19, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 18-1290.

On February 10, 2015 appellant, then a 56-year-old general engineer, filed a traumatic injury claim (Form CA-1) alleging that on December 17, 2014 she slipped and fell in a restaurant while attending a mandatory safety meeting while in the performance of duty. By decision dated June 30, 2015, OWCP denied her traumatic injury claim finding that she had not established that she was injured in the performance of duty on December 17, 2014. On June 29, 2016 appellant, through counsel, requested reconsideration and, by decision dated September 27, 2016, OWCP denied modification of the June 30, 2015 decision. On September 26, 2017 appellant, through

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

counsel, again requested reconsideration. By decision dated December 19, 2017, OWCP denied modification of its prior decisions.

The Board finds that the case is not in posture for decision because the record submitted to the Board is incomplete. In its September 27, 2016 decision, OWCP discussed and relied upon a September 27, 2016 statement from appellant's supervisor, M.M., which was initialed by others the acquisitions logistics division chief, as well as a supporting agenda to deny that appellant's alleged December 17, 2014 traumatic injury occurred in the performance of duty. The record before the Board on appeal does not contain this statement or the supporting agenda and, in light of OWCP's reliance on this evidence, the Board finds that the case is not in posture for decision.

Section 501.2(c) of the Board's *Rules of Procedure*,<sup>2</sup> provides that the Board has jurisdiction to consider and decide appeals from the final decision of OWCP in any case arising under the Federal Employees' Compensation Act.<sup>3</sup> Because the record as transmitted to the Board does not contain evidence that OWCP relied upon in reaching a final decision, which includes M.M.'s September 27, 2016 statement and the supporting agenda, it is incomplete and would not permit an informed adjudication of the case.<sup>4</sup> The Board will, therefore, remand the case to OWCP for reconstruction and proper assemblage of the record to include M.M.'s September 27, 2016 statement, the supporting agenda, and all other evidence reviewed by OWCP in its December 19, 2017 decision.<sup>5</sup> After such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's December 17, 2014 traumatic injury claim.

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<sup>2</sup> 20 C.F.R. § 501.2(c).

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *See D.H.*, Docket No. 17-0224 (issued August 16, 2018).

<sup>5</sup> *Id.*; *W.M.*, Docket No. 17-1667 (issued October 1, 2018).

**IT IS HEREBY ORDERED THAT** the December 19, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: August 13, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board